

BUSINESS LAW SECTION MEMBERS INVITED TO JOIN NEW AD HOC COMMITTEE ON ADR

By Gerald F. Phillips and James A. Hayes, Jr.

Editor's Note: The following is an interview conducted by James A. Hayes, Jr., Editor in Chief of the Business Law News, with Gerald F. Phillips, the Chair of the newly established Ad Hoc Committee on ADR of the Business Law Section. Mr. Phillips is a full time mediator and arbitrator. He arbitrates large complex commercial disputes and entertainment controversies. Mr. Phillips is a founding member of the College of Commercial Arbitrators, a recently formed organization of prominent experienced commercial arbitrators and academics.

Hayes: Gerry, I have recently learned that Twila Foster has announced that the Business Law Section has established a new Ad Hoc Committee on ADR for the Business Law Section and that you were named as its Chair. Please tell us first what is meant by ADR.

Phillips: ADR means Alternative Dispute Resolution. When I use ADR I mean Appropriate Dispute Resolution. It most often refers to mediation and arbitration, but there are other means of resolving disputes other than mediation and arbitration. I believe that in the future courtroom litigation will be the alternative and ADR will be the primary means of resolving controversies.

Hayes: Please tell us how the formation of this Ad Hoc committee came about.

Phillips: Last year, I wrote to Twila Foster, who was the Chair of the Business Law Section and suggested that the Section should have a committee devoted to ADR. I was subsequently invited to meet with the Section's Executive Committee to discuss the possibility of forming an ADR Ad Hoc Committee. I was asked, in December, to capsule what would be the goals of such a committee and how we might reach them.

Hayes: What is the mission of this committee?

Phillips: The Committee's mission is as follows:

1. To educate members of the Section and the State Bar about ADR processes, and when and how they can be utilized.

2. To instruct Section members how to draft ADR provisions to fit the needs of parties, whether in a contract provision before a dispute arises or, when a dispute has arisen and there is no contract providing for ADR, an agreement to submit the controversy to mediation and arbitration.

3. To work with members of the Section and the Chairs of the Standing Committees to help them educate their clients and generally the business community to the benefits of ADR and its processes.

4. To work with law firms on how to integrate ADR into the structure of the firms.

5. To participate in educational programs conducted by the Section, State Bar and others presenting panels discussing ADR.

6. To work with the Business Law News to present articles dealing with ADR.

Hayes: That sounds like an ambitious program. Let me first ask you about programs to be sponsored by the Business Law Section. Has the Ad Hoc Committee put on any programs?

Phillips: I am very glad that you asked. At the forthcoming Annual Meeting of the State Bar in Anaheim on September 6-9 the Section's Ad Hoc Committee will put on its first program. It will be co-sponsored with the ADR Committee of the State Bar.

The program is entitled: "Critical ADR Issues in the New Millennium in the Areas of Bankruptcy, Franchise, Security Disputes and Entertainment Disputes." The panelists will be Paul Dubow, Robbin L. Itkin, and Charles E. Rumbaugh. I will be the moderator. All of the panelists are

members of Business Law Section.

Paul Dubow was for many years national director of litigation for Dean Witter Reynolds, Inc. He tried over 100 securities arbitrations. He has been the securities industry representative to the Securities Industry Conference on Arbitration since 1991. He is in his second term as a member of the National Arbitration Committee of NASD Dispute Resolution. He has been on the Executive Committee of the Business Law Section. He is now an arbitrator and mediator in Danville, CA specializing in securities and employment disputes.

Robbin L. Itkin is a founding shareholder of Wayne. Spiegel, Itkin, A Law Corporation, which specializes in sophisticated out-of-court bankruptcy workouts and reorganizations involving business entities, high profile individuals, debtors, creditors, bondholders and creditors' committees and trustees in all industries. Ms. Itkin is a certified mediator for the United States Bankruptcy Court, Central District of California Mediation Program.

Charles E. Rumbaugh is an attorney practicing in commercial, international, and government contract law, with an emphasis in the private dispute arena as an arbitrator/mediator and private judge. As a recognized professional in ADR methods, including arbitration and evaluative or facilitative mediation, he has been the lead arbitrator and mediator in a spectrum of matters ranging from minor controversies to multi-million dollar cases, multi-party complex disputes involving commercial and international transactions, employment and ethics matters, franchises, securities, real estate, construction projects, and personal injuries.

Hayes: What is your background in ADR?

Phillips: I am a full time mediator and arbitrator. I serve on various panels including those maintained by AFMA (American Film Marketing Association) which has a panel for arbitrating film industry disputes and the American Arbitration Association

(AAA). I am on the Los Angeles AAA's Commercial and Business, Entertainment, Commercial, and Large/Complex Case mediation panels. I serve on various other state and national ADR committees.

Hayes: This is a most impressive panel and appears to be a grouping with diverse expertise.

Phillips: The panelists are all ADR experts in very different industries. I have selected this variegated group so that we can all learn how ADR is being conducted in these distinct fields. This will also serve to demonstrate that ADR is suitable to resolving many kinds of controversies.

Hayes: Gerry, you have just told us about one of the programs to be presented by the Business Law Section. Is the Section also involved in other programs to be presented in Anaheim relating to ADR?

Phillips: Yes it is. Ed Swanson and I will participate in another program with two members of the ADR Committee, Ira Spiro and Nancy Neal Yeend. The program is entitled: "ADR Clauses: Writing Ones that Work and Avoiding Pitfalls."

Hayes: Going back to what you referred to as the mission statement, have members of the Committee produced any papers?

Phillips: The *Business Law News* has previously published two articles by Ed Swanson and me: "What Every Business Client Should Know About Mediation" and "What Every Business Client Should Know About Arbitration." Robbin Itkin has written an article which will be part of the material we will provide to those who attend the first program that we have just discussed.

Hayes: Among the goals of the Committee you mentioned that it will work with law firms to integrate ADR into their structure. What do you mean by this?

Phillips: I could spend a great many hours explaining this. I believe that for law firms to be competitive in the future they must be well-versed in ADR as well as courtroom litigation. Clients are more concerned than ever with the spiraling costs of litigation and want to resolve disputes efficiently, quickly and economically. Law firms must help their corporate clients and corporate law departments to design and

develop systems whereby the company reviews each dispute as it arises to determine how various ADR processes can be used to effectively resolve that dispute.

Hayes: Do you advocate that all disputes should be analyzed from the start to see how they can be resolved through ADR?

Phillips: Absolutely, and furthermore the ADR process should not be considered merely after a lawsuit is filed or when a client asks the attorney to file a complaint. It should start when an attorney is drafting an agreement and the attorney should discuss with the client whether it would be prudent to provide an ADR provision in the contract being negotiated.

Hayes: Gerry, do you have any ideas how the Committee could assist Section members in explaining ADR to their clients?

Phillips: Once again, thank you for that lead in question. To help the Committee to accomplish its goals, I visualize a speakers bureau of Section members who would take the message on the road, to speak at law firms and corporations concerning the benefits of ADR and how the processes work. Some time ago I established a Speakers Bureau for the ABA Forum Committee on Entertainment and Sports Industries. A few years ago I established the Task Force on Entertainment Law and ADR for the ABA Section on Dispute Resolution. Since then we have visited approximately twenty law firms and corporations. The goal of this Ad Hoc Committee should be to visit law firms and corporations throughout California. We should perhaps start with the firms of our Section members. MCLA credits would be available. I would be pleased to join such meetings with members of our Committee

Hayes: May someone who is not that knowledgeable about ADR join the Ad Hoc Committee?

Phillips: Certainly, The purpose of this Committee is to help all lawyers understand ADR. All transactional attorneys and all who counsel clients must be knowledgeable about ADR, and it is our mission to help all business attorneys to understand the benefits of ADR and how it can be used in every industry. With the growing use of court-mandatory ADR, all litigation lawyers must also become well-versed in ADR. Litigation

attorneys must understand that their talents used in conducting a trial are not the same skills required in a mediation and even in an arbitration.

Hayes: What is the present structure of the Committee? May those wanting to truly participate now in the work of the committee do so?

Phillips: The Committee is now in formation. We are seeking members, and for those anxious to participate, we are now building an executive committee to help us achieve our goals. I visualize an executive committee with representatives from each of the Business Law Section Standing Committees. I hope as a result of this interview members of the various Standing Committees will fax their resumes to me or call me. My telephone number is (310) 277-7117 and my fax is 310-286 9182. My e-mail address is gphillips@pllalaw.com.

Hayes: Thank you for participating in this interview. I can add my own testimonial for ADR. A few weeks ago our firm won a substantial award for our client in a securities fraud case for which we had agreed to binding arbitration. We were able to present in a day a case that would have taken at least a week to present in state court. This was the first time that I tried a case in arbitration and I had some of the common prejudices against it going in, but now I see the advantages of this approach and wouldn't hesitate to use arbitration or mediation again. Needless to say our clients are new believers in ADR, too!

Phillips: It is said that mediation is a win-win solution. The same is true for the Ad Hoc Committee. Join it - you will like it!

